

Maeder



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: A.C. Bulls and Sons, Inc.

File: B-239948

Date: October 12, 1990

Albert C. Bulls, III, Esq. for the protester.
Michael King, Department of Agriculture, for the agency.
Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Award of lease for office space to higher-priced offeror is proper where solicitation provides for consideration of environmental factors and the contracting agency reasonably determined that protester's proposed site may pose safety problems for agency employees and clients.

DECISION

A.C. Bulls and Sons, Inc. protests the award of a contract to Mac Smith under request for proposals (RFP) No. SCS-18-AL-89, issued by the United States Department of Agriculture (USDA) for lease of office space in a building to be constructed in Tuskegee, Alabama. The leased space will serve as the Macon County USDA Service Center and house offices of the Farmers Home Administration, Agricultural Stabilization and Conservation Service and Soil Conservation Service (SCS). The protester questions the agency's evaluation of its proposal and alleges that the reasons underlying its exclusion were not valid.

We deny the protest.

The RFP, issued on August 18, 1989, specified that the leased space must be bounded by the city limits of Tuskegee, within jurisdiction of police and fire departments, served by public utilities, and outside the 100 year flood plain area. Additionally, the solicitation specified that the three agencies were to be located in the same building, each have a separate entrance and each agency's space was to be contiguous on one floor. A minimum net usable square feet of office and conference room space was specified and 30 on-site parking

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conference room space was specified and 30 on-site parking spaces were required. The lease term was to be for five years.

The RFP stated that the government would award to the responsible offeror whose proposal is most advantageous to the government, price and other factors considered. According to the RFP, in addition to price, proposals were to be evaluated against the following five factors listed in descending order of importance: handicapped accessibility; consolidation with other Agricultural agencies; public parking; efficiency of the office layout/arrangement; and environmental factors. The last factor was described as follows in paragraph A8(e):

"Environmental factors include the physical characteristics and aesthetics of the building and the surrounding area which would enhance or detract from SCS's ability to serve the public, and/or the proximity to other Agricultural agencies and/or establishments that are used in the daily servicing of our clients."

Six offers were received and Bulls was the apparent third-low offeror. The low offeror was eliminated from competition as not meeting the requirements of the RFP since its proposal offered only 25 parking spaces. Bulls and the second-low offeror were both eliminated from competition because of lease award factor A8(e). A notation on the Abstract of Offers indicates that Bulls was not selected for award because of "location from town as well as neighborhood not considered suitable location for serving clients."

Bulls was notified on May 31, 1990 that the agency had rejected its bid and had awarded the contract to Mac Smith. Smith was the fourth low offeror. Bulls filed a protest with our Office on June 7.

Bulls first complains that the site proposed by Smith "is located in a residential area which is allegedly zoned improperly for this type of development." Based on information in USDA's report to our Office and photographs submitted by the protester, it appears that the site Smith proposed was a flat, grassy lot in a relatively undeveloped area on Torrence Road, not far from where that street intersects Main Street, which is also U.S. Route 29, a major highway extending south from Tuskegee through Macon County. Although the rear of residential properties on Main Street do appear to abut one side of the proposed site, the land across the street from the site is a horse and cow pasture and apart from a small welding shop, the surrounding area otherwise appears to consist of open fields.

More importantly, the protester does not specifically say that the Smith site is zoned for residential use only, but alleges that it is "improperly zoned," suggesting either that Bulls believes the local zoning board incorrectly zoned the property or that Bulls believes that Smith will have to obtain a zoning variance to construct a building for office space on this site. The determination of the correct zoning for the site, however, is a matter for the local zoning authorities and any questions regarding that zoning are an issue to be resolved between Bulls and the zoning authorities. Moreover, as the agency points out, it must rely on the offerors to assure that the sites they offer are zoned for the intended use. Here, the agency says that not only has Smith assured it that the site is zoned appropriately but has provided a copy of a building permit issued by the City of Tuskegee and copies of canceled checks showing that the appropriate fees were paid. In view of this record, we cannot say that the USDA acted unreasonably in finding Smith's site acceptable.

The protester next argues that the USDA improperly rejected its proposal because of the location of the site it proposed. Contrary to agency concerns about its location from town, Bulls says that the site it proposed is within the city limits as required by the solicitation and is in a commercial area. The protester also argues that the agency's description of the location as being an "unsuitable neighborhood" is incorrect and "appears to be based on a racially-biased view." Bulls contends that its offer was rejected because its proposed site was close to a public housing project and the agency erroneously believed that that location would threaten the safety of USDA employees. The protester contends that it should have received the award because its proposal met all the requirements of the RFP and was priced lower than the awardee's.

The agency admits that Bulls' offer met the location requirements in that it is located within the corporate city limits and says that location from town was not a factor in the decision not to award to Bulls. The agency also concedes that Bulls' offer was \$.95 per square foot or 8.5 percent less than the awardee's, but notes that price was not the only factor evaluated in making the award.

The agency denies that its decision was racially motivated and states that Bulls' offer was not accepted because its proposed site raised serious concerns about the safety and welfare of the USDA employees and its clients. According to the agency, Bulls' proposed site has a "documented history of high crime and drug trafficking." The agency enclosed a letter from the state soil conservationist in which he


expressed clients' concerns over the proposed office space and detailed a conversation with a Tuskegee police official. According to the soil conservationist, the police official stated that there was a "real problem with the selling and use of crack within the housing project located within three blocks of the proposed office location." The problem was so severe that the police department established a substation at the entrance of this housing project and made the flow of traffic one way in order to help control the drug trafficking. While the police official stated that he felt the drug problems were "under control" and that "personal safety was not a problem," he also advised that the police department plans to keep the police substation at the entrance to the housing project.

When an agency evaluation is challenged, we will examine that evaluation to ensure that it was reasonable and consistent with the evaluation criteria. The determination of the relative merits of a proposal is primarily a matter of administrative discretion which we will not disturb unless it is shown to be unreasonable. Wellington Assocs., Inc., B-228168.2, Jan. 28, 1988, 88-1 CPD ¶ 85.

From our review of the record, we believe that the USDA's rejection of the Bulls proposal was reasonable. Although the Bulls proposal offered a site within the RFP's prescribed geographic area, the solicitation stated that a proposed site should be located in an area which would enhance and not detract from SCS's ability to serve the public. Bulls argues that its site meets this criterion, relying primarily on the police official's statement that the drug trafficking situation near the Bulls site was now "under control." However, in view of the fact that the selling and use of crack cocaine was so severe that the police had to establish a substation in the area and intend to keep a police presence in the area, we cannot say that the agency acted unreasonably in concluding that the nature of the surrounding area would detract from the agency's ability to serve its clients. The fact that an area with known drug problems is "under control" by virtue of continued police presence does not mean that the agency could not reasonably have concerns about the suitability of the location. Here, although Bulls' proposal was 8.5 percent lower in cost than the awardee, the agency found this price advantage was outweighed by the concerns posed by the location of Bulls' proposed site. Since there appears to be a reasonable basis for the agency's concern that this location may detract from the agency's ability to serve the

public, we have no objection to the agency's award to the next low offeror.

The protest is denied.


James F. Hinchman
General Counsel